

**South Ayrshire Council****Report by Executive Director – Resources, Governance and Organisation  
to South Ayrshire Council  
of 17 December 2015**

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**Subject: Equity Stake - Ayr Academy Learning Campus Project**

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**1. Purpose**

- 1.1 The purpose of this report is to seek approval for the Council to take up a 10% equity stake in the DBFM Holdco set up for the Ayr Academy Learning Campus Project and approval of the appointment of the Head of Property and Risk as a Director of DBFM Holdco and DBFM Co.

**2. Recommendation****2.1 It is recommended that the Council:**

- (1) **grants authority to take up a 10% equity stake in the DBFM Holdco set up for the Ayr Academy Learning Campus Project; and**
- (2) **approves the appointment, if required, of the Head of Property and Risk as a director of DBFM Holdco and DBFM Co on behalf of the Council.**

**3. Background**

- 3.1 On 26 November 2015, the Deputy First Minister and Cabinet Secretary for Finance and Sustainable Growth, John Swinney, provided an update to the Scottish Parliament on Scotland's Public Finances. The update included a statement advising that an agreement had been reached with the Office of National Statistics on a revised hub model that addresses the changes required under the European System of Accounts 2010 rules (ESA10).
- 3.2 This was followed up by a letter from the Scottish Futures Trust Hub Programme Director to the Chief Executive of South Ayrshire Council confirming that the Ayr Academy Learning Campus project can now proceed to Financial Close.
- 3.3 The Leadership Panel of 1 December 2015 approved delegated authority to the Executive Director - Resources, Governance and Organisation to sign amended Hub Initiative Territory Partnering and Shareholder agreements on behalf of Council as result of changes required under the ESA10 rules. These have now been signed.
- 3.4 One of the main changes relates to the formation of a DBFM Co. Under the original agreement, a special purpose company was to be formed called the Subhubco which would have been wholly owned by the hubco joint venture. However, due to the perceived control the public sector has over hubco resulting from shareholding arrangements, and consequently the Subhubco, this requires to be amended. The Council will therefore now contract with a company known as the DBFM Co that sits outside of the hubco corporate structure.
- 3.5 The DBFM Co is wholly owned by a holdco – DBFM Holdco. This company is the vehicle in which the parties will invest. DBFM Holdco will be structured to have a nominal amount of share capital equity, expected to be £1 (one pound). This equity will be provided by the

private sector development partners (60%), SFTi (10%), the Hub Community Foundation (20%), with the Council providing the remaining 10% at a cost of 10p (ten pence). The Council will take on the usual responsibility of shareholders. The liability of the Council is limited to the value of its shareholding - ie ten pence.

#### **4. Proposals**

- 4.1 The Leadership Panel report of 1 December indicated the structure of the agreements required to resolve the ESA10 issues and sought approval for the Council to sign the Revised Territory Partnering and Shareholders Agreements. The lawyers acting for SWHub and their funders however have subsequently advised that they do not consider that the approved report gives the necessary express authorisation for the Council to take up the required 10% equity stake in the DBFM Holdco company.
- 4.2 The purpose of this report is therefore to seek express authority for the Council to take the 10% equity stake in the DBFM Holdco company that will be established for the new Ayr Academy Learning Campus project
- 4.3 As a 'B' shareholder in DBFM Holdco the Council may have an opportunity to appoint a Director to DBFM Holdco, (in the event that the other B Shareholder – the hub Community Foundation – does not so appoint) As a Director of a limited company the individual appointed will be expected to operate under the responsibilities and fiduciary duties of a Director. Directors in DBFM Holdco will also be required to be Directors of DBFM Co.
- 4.4 In the event that the Council is expected to appoint a Director, it is expected by SFT that the person undertaking this role will be an officer of the Council and it is therefore proposed that the Head of Property and Risk be approved now to be appointed as Council nominated director if required in both DBFM Holdco and DBFM Co.

#### **5. Resource Implications**

##### **5.1 *Financial***

- (1) South Ayrshire Council's equity share of 10% in the DBFM Holdco equates to 10p (ten pence).
- (2) The share capital includes the right to receive dividends for DBFM Co and DBFM Holdco. These are paid after all other obligations of DBFM Co and DBFM Holdco are met (facilities management and lifecycle costs, SPV operating costs, debt payments and taxation) and are therefore the highest risk form of capital. The financial structure of the DBFM Holdco is designed to produce no dividends until senior debt has been repaid. Payments are therefore not expected until the final year of the contract. With such a small level of equity the level of return is highly sensitive to small movements in both the timing and quantum of dividend payments. The base case financial model indicates a return on equity of 63%.

##### **5.2 *Legal***

The formal approval of this report is a requirement of the legal representatives of SWHub and their funders to reach Financial Close for the project.

##### **5.3 *Human Resources***

There are no HR issues arising from this paper.

#### **6. Risk**

- 6.1 ***Risk Implications of Adopting the Recommendations*** - There are no risks associated with accepting the recommendations.

6.2 **Risk Implications of Rejecting the Recommendations** - Failure to approve the recommendations will have a significant impact on the delivery programme for the Council's DBFM project. Under the new model, the Ayr Academy Learning Campus Project will not be permitted to financially close without the Council taking up the 10% equity stake in the project DBFM Holdco.

## 7. Equalities

7.1 The proposals in this report have been assessed through the Equalities Impact Assessment Scoping process, and there are no significant positive or negative equality impacts of agreeing the recommendations, therefore an Equalities Impact Assessment is not required. A copy of the Equalities Scoping Assessment is attached as Appendix 1.

## 8. Sustainable Development Implications

8.1 This report does not propose or seek approval for a plan, policy, programme or strategy or document otherwise described which could be considered to constitute a plan, programme, policy or strategy.

## 9. Options Appraisal

9.1 An options appraisal has not been carried out in relation to the subject matter of this report.

## 10. Link to Council Plan

10.1 This report supports the delivery of the Corporate Plan Objective 14d Maintain high standards of probity, governance and accountability, with clear standards of service and balanced public performance reporting; and Improvement Area 2: Governance.

## 11. Results of Consultation

- (1) There has been no public consultation on the contents of this paper.
- (2) Consultation has taken place with Councillor Robin Reid, Portfolio Holder for Resources and Performance.

## 12. Next Steps for Decision Tracking Purposes

12.1 If the recommendations above are approved by Members, the Head of Property and Risk will ensure that the following steps are taken within the following timescales, with progress reported to the Leadership Panel in the 'Council and Leadership Panel Decision Log' at each of its meetings until such time as the steps are completed:

| <b><i>Steps to be taken</i></b> | <b><i>By what date</i></b> | <b><i>Managed by</i></b>  |
|---------------------------------|----------------------------|---------------------------|
| Financial close                 | January 2016               | Head of Property and Risk |

**Background Papers**      **Report to Leadership Panel of 1 December 2015 – Amendments to South West Hubco Agreement (*Members only*)**

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**Date: 15 December 2015**

1. Policy details

|  |                              |
|--|------------------------------|
| Policy Title: Equity Stake - Ayr Academy Learning Campus Project | Lead Officer: Donald Gillies |
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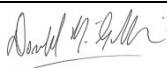
2. Which communities, groups of people, employees or thematic groups do you think will be, or potentially could be, impacted upon by the implementation of this policy? Please indicate whether these would be positive or negative impacts

| Community, Groups of People or Themes   | Negative Impacts | Positive impacts |
|---|------------------|------------------|
| The whole community of South Ayrshire   | No               | No               |
| People from different racial groups, ethnic or national origin.                               | No               | No               |
| Women and/or men (boys and girls)   | No               | No               |
| People with disabilities  | No               | No               |
| People from particular age groups for example Older people, children and young people         | No               | No               |
| Lesbian, gay, bisexual and heterosexual people  | No               | No               |
| People who are proposing to undergo, are undergoing or have undergone a process to change sex | No               | No               |
| Pregnant women and new mothers  | No               | No               |
| People who are married or in a civil partnership  | No               | No               |
| People who share a particular religion or belief  | No               | No               |
| Thematic Groups: Health, Human Rights, Rurality and Deprivation.                              | No               | No               |

3. Do you have evidence or reason to believe that the policy will support the Council to:

| General Duty and other Equality Themes  | Level of Negative and/or Positive Impact (high, medium or low) |
|---|--|
| Eliminate discrimination and harassment faced by particular communities or groups | Low  |
| Promote equality of opportunity between particular communities or groups          | Low  |
| Foster good relations between particular communities or groups                    | Low  |
| Promote positive attitudes towards different communities or groups                | Low  |
| Increase participation of particular communities or groups in public life         | Low  |
| Improve the health and wellbeing of particular communities or groups              | Low  |
| Promote the human rights of particular communities or groups                      | Low  |
| Tackle deprivation faced by particular communities or groups                      | Low  |

4. Summary Assessment

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|--|--|---|
| <b>Is a full Equality Impact Assessment required?</b><br>(A full EIA must be carried out on all high and medium impact policies)   |  | YES <input type="checkbox"/> O <input checked="" type="checkbox"/> X <input type="checkbox"/> |
| <b>Rationale for decision:</b> An Equality Impact Assessment is not required on this occasion as this report is not seeking approval for works which will have an impact on community participation. |  |   |
| Signed :  .....Head of Service  |  |   |
| Date: 14/12/15   | Copy to <a href="mailto:equalities@south-ayrshire.gov.uk">equalities@south-ayrshire.gov.uk</a> |   |